

No. 791

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

AMERICAN SALES BOOK COM-
PANY (A CORPORATION) AND
WARREN F. BECK,

Plaintiffs in Error,

VS.

JOSEPHUS BULLIVANT, JR.,

Defendant in Error.

TRANSCRIPT OF RECORD.

In Error to the Circuit Court of the United States
for the District of Oregon.

THE FILMER BROTHERS CO. PRINT, 434 BARBOME ST., S. F.

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*In the Circuit Court of the United States for the District
of Oregon.*

AMERICAN SALES BOOK COMPANY
(a Corporation), and WARREN F.
BECK,

Plaintiffs,

vs.

JOSEPHUS BULLIVANT, Jr.,

Defendant.

Stipulation as to Printing Record and Assignment of Cause.

It is hereby stipulated between the parties that, when printing the record in the above-entitled case for the hearing of the writ of error, it shall not be necessary for the original plaintiffs' Exhibits "B" and "C" and defendant's original Exhibits "A," "B," and "C," to be reproduced, but that such original exhibits, having, by the stipulation of the parties heretofore entered into, and in accordance with the order of the United States Circuit Court, for the District of Oregon, been forwarded to the United States Circuit Court of Appeals for the Ninth Circuit, may be used in the argument in the latter court.

It is further stipulated that this cause may be assigned to the term of the said Circuit Court of Appeals held at San Francisco in February, 1902.

Dated, January 11, 1902.

T. J. GEISLER,

Attorney for Plaintiffs.

OTTO J. KRAEMER,

Attorney for Defendant.

[Endorsed]: No. 791. In the Circuit Court of the United States, for the District of Oregon. American Sales Book Co. (a Corporation), and Warren F. Beck, Plaintiffs, vs. Josephus Bullivant, Jr., Defendant. Stipulation as to Printing Record and Assignment of Cause. Filed January 15, 1902. F. D. Monckton, Clerk.

Citation on Writ of Error.

United States of America, }
 District of Oregon. } ss.

To Josephus Bullivant, Jr., Greeting:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the District of Oregon, wherein American Sales Book Company, a corporation, and Warren F. Beck are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said District, this December 17th, 1901.

WM. B. GILBERT,
 Judge.

Due service of within citation is hereby admitted December 17, 1901,

OTTO J. KRAEMER,
Attorney for Defendant.

[Endorsed]: No. 2,665. United States Circuit Court, District of Oregon. American Sales Book Company and Warren F. Beck vs. Josephus Bullivant, Jr. Citation on Writ of Error. Filed December 17, 1901. J. A. Sladen, Clerk, By G. H. Marsh, Deputy Clerk.

In the United States Circuit Court of Appeals, for the Ninth Circuit,

AMERICAN SALES BOOK COMPANY
(a Corporation), and WARREN F.
BECK,
Plaintiffs in Error,
vs.
JOSEPHUS BULLIVANT, Jr.,
Defendant in Error.

Writ of Error.

The United States of America—ss.

The President of the United States of America, to the Judges of the Circuit Court of the United States for the District of Oregon, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the Circuit Court before the Honorable Charles B. Bellinger,

one of you, between American Sales Book Company, a Corporation, and Warren F. Beck, plaintiffs and plaintiffs in error, and Josephus Bullivant, Jr., defendant and defendant in error, a manifest error hath happened to the great damage of the said plaintiff in error, as by complaint doth appear; and we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, and in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, California, within thirty days from the date hereof, in the said Circuit Court of Appeals to be then and there held; that the record and proceedings aforesaid being then and there inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States of America should be done.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, this December 17, 1901.

[Seal]

J. A. SLADEN,
Clerk of the Circuit Court of the United States for the
District of Oregon.

By G. H. Marsh,
Deputy Clerk.

[Endorsed]: In the United States Circuit Court of Appeals, for the Ninth Circuit. American Sales Book Company et al., Plaintiffs in Error, vs. Josephus Bullivant, Jr., Defendant in Error. Writ of Error. Filed December 17, 1901. J. A. Sladen, Clerk, United States Circuit Court, District of Oregon. By G. H. Marsh, Deputy Clerk.

Copy of this writ filed by me December 17, 1901.

J. A. SLADEN,

Clerk United States Circuit Court, District of Oregon.

In the Circuit Court of the United States for the District of Oregon.

October Term, 1900.

Be it remembered, that on the 9th day of March, 1901, there was duly filed in the Circuit Court of the United States for the District of Oregon, a declaration, in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

AMERICAN SALES BOOK COMPANY
(a Corporation),

Plaintiff,

vs.

JOSEPHUS BULLIVANT, Jr.,

Defendant.

Declaration—Trespass on the Case.

District of Oregon—ss.

American Sales Book Company, a corporation duly organized, existing and domiciled at Elmira, in the State

of New York, plaintiff in this action, by T. J. Geisler, its attorney, complains of Josephus Bullivant, Jr., a citizen of the State of Oregon, defendant, of the plea of trespass on the case.

For that Warren F. Beck of Elmira, New York, before and at the time of his application for the hereinafter mentioned letters patent, was a citizen of the United States, and was the true, original, first and sole inventor of the certain new and useful improvements in pads designed for use by merchants and others in taking manifold copies of orders, etc., duly described in the specification forming part of the letters patent hereinafter mentioned, and named therein as "Improvements in Manifold Sales Book and Holders," and which was not known or used before his invention or discovery thereof, or patented, or described in any printed publication in any country before his invention or discovery thereof, more than two years prior to this application, or in public use, or on sale in the United States for more than two years prior to this application, and no application for a patent on said improvements having been filed by him, or his legal representatives, or assigns in any country foreign to the United States prior to his application for letters patent of the United States therefor.

And for that, on the 24th day of April, 1900, letters patent for said invention in due form of law were, on the application of the said Warren F. Beck, duly issued and delivered to him in the name of the United States of America, and under the seal of the Patent Office of the United States, and were signed by the Secretary

of the Interior of the United States and countersigned by the Commissioner of Patents, said letters patent being dated on said last mentioned day, and numbered No. 647,934.

And for that, said letters patent did grant to said Warren F. Beck, his heirs and assigns, for the term of seventeen years, beginning with the said last mentioned day, the exclusive right to make, use and vend the said patented invention, and permit others so to do, throughout the United States and the territories thereof.

And for that, heretofore after the issue of the said letters patent hereinbefore mentioned, and prior to each and all of the acts of infringement hereinafter complained of against the defendant, the said Warren F. Beck, by an instrument in writing duly executed and delivered by him to the plaintiff, did assign, transfer and set over to the plaintiff all his right, title and interest whatever in said invention; and the plaintiff at the times of the said acts of infringements was, and still is exclusive owner of all right, title and interest in, to or under the said letters patent.

And the plaintiff says that since the plaintiff has become the owner of all the right, title and interest in and to said letters patents, it extensively practiced the said patented invention; and did make and vend to merchants and others such manifolding salesbooks and holders in large quantities to its great advantage and profit. And that the plaintiff at all times was, and still is prepared to supply said patented manifolding sales books to all

who desire to purchase the same. That the said patented invention through said efforts of this plaintiff has become extensively advertised, and is widely known. That on the said manifolding sales books so manufactured and sold by the plaintiff due and sufficient notice was given to the public that the invention therein comprised had been duly patented; and that the public generally have acknowledged the merits and utility of said invention, and the rights of the plaintiff under said letters patent issued therefor. That about the 1st day of February, 1901, the defendant was further personally apprised of the said letters patent, and manifolding sales books, manufactured by plaintiff and embodying said patented improvements, were offered for sale to him.

Yet the defendant knowing the premises and though having need of such manifolding sales books, refused to purchase the same from plaintiff and its agents; and instead, for the purpose of contriving to injure the plaintiff, from about the first day of February, 1901, continuously to the 8th day of March, 1901, during the term of said letters patent, unlawfully and wrongfully, without the consent, and against the will of the plaintiff, did use in his business at Portland in the State of Oregon, manifolding sales books embodying said patented improvements, which books, the defendant had unlawfully procured from one W. H. Jarrett, residing out of this District of Oregon, to wit, at Seattle, Washington, in violation and infringement of the said exclusive right secured by said letters patent and assignment thereof to this plaintiff, and contrary to the statutes of

the United States in such cases made and provided; whereby the plaintiff has been greatly injured and deprived of profits, royalties and benefits which it otherwise would have derived, and has sustained actual damages in the amount of \$100.

Wherefore, by force of the statutes of the United States a right of action has accrued to the plaintiff to recover the said actual damages, and such additional amount not exceeding in the whole three times the amount of said actual damages, as the Court may see fit to adjudge and order, besides costs; which damages, however, the defendant has refused, and still refuses to pay, and, therefore, the plaintiff brings this action.

T. J. GEISLER,
Attorney for Plaintiff.

United States of America, }
District of Oregon. } ss.

I, Charles H. Wilcox, of Portland, Oregon, being first duly sworn, depose and say that I am the agent and representative of the plaintiff in the above-entitled case within and for the State of Oregon; that I have read the foregoing declaration, and that the same is true as I verily believe; that the reason that this verification is made by me is that the plaintiff is a corporation domiciled at Elmira in the State of New York, and that none of the officers thereof are within the State of Oregon; and that I have personal knowledge of all the material allegations alleged in said declaration.

C. H. WILCOX.

Subscribed and sworn to before me this 8th day of March, 1901.

[Seal]

T. J. GEISLER,
Notary Public for Oregon.

Filed March 9, 1901. J. A. Sladen, Clerk, United State Circuit Court, District of Oregon.

RETURN OF CIVIL PROCESS.

United States of America, }
District of Oregon. } ss.

I hereby certify that on the 9th day of March, 1901, at Portland, Multnomah, in said district, I duly served the within summons upon the therein named Josephus Bullivant, Jr., by delivering to him personally a true copy of said summons, duly certified to by J. A. Sladen, together with a copy of the complaint in the within entitled cause, duly certified to by T. J. Geisler, attorney for the plaintiff.

ZOETH HOUSER,
United States Marshal.
By S. L. Morse,
Deputy.

*In the Circuit Court of the United States for the Ninth
Judicial Circuit, District of Oregon.*

AMERICAN SALES BOOK COM-
PANY (a Corporation),

Plaintiff,

vs.

JOSEPHUS BULLIVANT, Jr.,

Defendant.

No. 2665.

Summons.

The President of the United States to Josephus Bullivant,
Jr., the above-named Defendant, Greeting:

You are hereby commanded to be and appear in the above-entitled court, holden at Portland, in said District, and answer the complaint filed against you in the above-entitled action within ten days from the date of the service of this summons upon you, if served within the county of Multnomah, in said District, or if served within any other county of said District then within thirty days from the date of such service upon you; and if you fail so to appear and answer, for want thereof, the plaintiff will take judgment against you for the sum of \$100.00, actual damages, and such additional amount, not exceeding in the whole, three times the amount of said actual damages, as the Court may see fit to adjudge or order, besides costs.

And this is to command you, the marshal of said District, or your deputy, to make due service and return of this summons. Hereof fail not.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, and the seal of said Circuit Court, affixed at Portland, in said District this 9th day March, 1901.

[Seal]

J. A. SLADEN,
Clerk.

By G. H. Marsh,
Deputy Clerk.

Returned and filed March 11, 1901. J. A. Sladen, Clerk. United States Circuit Court, District of Oregon.

And afterwards, to wit, on Monday, the 6th day of May, 1901, the same being the 25th judicial day of the regular April term of said Court—Present, the Honorable CHARLES B. BELLINGER, United States District Judge presiding—the following proceedings were had in said cause, to wit:

In the Circuit Court of the United States for the District of Oregon.

AMERICAN SALES BOOK COM-
PANY (a Corporation),

vs.

No. 2665.
May 6, 1901.

JOSEPHUS BULLIVANT, Jr.

Order Amending Declaration.

Now, at this day, on motion of Mr. T. J. Geisler, of counsel for the plaintiff herein, it is ordered that said plaintiff be, and it is hereby, allowed to make Warren F. Beck, of Illinois, a party plaintiff in this cause.

And afterwards, to wit, on the 7th day of May, 1901, there was duly filed in said court an amended declaration, in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

AMERICAN SALES BOOK COM- PANY (a Corporation), and WAR- REN F. BECK,	} Plaintiffs,
vs.	
JOSEPHUS BULLIVANT, Jr.,	} Defendant.

Amended Declaration—Trespass on the Case.

District of Oregon—ss.

By leave of the Court obtained, American Sales Book Company, a corporation duly organized, existing and domiciled at Elmira, in the State of New York, and Warren F. Beck, a citizen of the State of New York, also residing at Elmira aforesaid, plaintiffs in this action, by T. J. Geisler, their attorney, complains of Josephus Bullivant, Jr., a citizen of the State of Oregon, defendant, of the plea of trespass on the case.

For that Warren F. Beck of Elmira, New York, before and at the time of his application for the hereinafter-mentioned letters patent was a citizen of the United States, and was the true, original, first and sole inventor of the

certain new and useful improvements in pads designed for use by merchants and others in taking manifold copies of orders, etc., duly described in the specification forming part of the letters patent hereinafter mentioned, and named therein as "Improvements in Manifold Sales-Books and Holders," and which was not known or used before his invention or discovery thereof, or patented, or described in any printed publication in any country before his invention or discovery thereof, or more than two years prior to his application, or in public use, or on sale in the United States for more than two years prior to his application, and no application for a patent on said improvements having been filed by him, or his legal representative, or assigns in any country foreign to the United States prior to his application for letters patent of the United States therefor.

And for that, on the 24th day of April, 1900, letters patent for said invention in due form of law were, on the application of the said Warren F. Beck, duly issued and delivered to him in the name of United States of America, and under the seal of the Patent Office of the United States, and were signed by the Secretary of the Interior of the United States and countersigned by the Commissioner of Patents, said letters patent being dated on said last mentioned day, and numbered No. 647,934, which letters patent, or a certified copy thereof, the plaintiffs will produce on the trial of this cause, as the Court may direct.

And for that, in and by said letters patent there was granted unto the said Warren F. Beck, as said inventor, and his legal representatives, the exclusive right for the

term of seventeen (17) years beginning with the said date of said letters patent to make, use, and sell, and permit others so to do throughout the United States and territories thereof, manifold sales books or pads, embodying the following described improvement, or feature:

“The combination, with a manifold-pad, of a carbon or transfer-sheet normally resting upon the top of the pad and overlying the leaves thereof, said transfer-sheet having a portion cut away to expose a portion of said leaves at or near their free ends for the purpose set forth, the leaves at their free ends being otherwise concealed by the transfer-sheet.”

And for that, heretofore after the issue of the said letters patent hereinbefore mentioned, and prior to each and all of the acts of infringement hereinafter complained of against the defendant, the said Warren F. Beck, by an instrument in writing duly executed, entered into an agreement (which to plaintiffs will produce at the trial of this cause if required) between himself and the above-named plaintiff American Sales Book Company, a corporation giving and granting unto the latter the exclusive right to make, use and sell and permit others so to do throughout the United States, and its territories, manifold sales books or pads, embodying the above-described patented invention and improvement; and, in and by the terms of said agreement the said American Sales Book Company undertook and promised to practice said invention for the benefit of themselves and said Warren F. Beck, patentee; and further to do all in its power to introduce said patented invention, to secure for the said

Warren F. Beck his benefits and profits which would be derived by the practice of said invention, and to prosecute at its own expense, and protect said Warren F. Beck against all unlawful infringers of the said exclusive rights granted by said letters patent.

And the plaintiffs further allege that since the execution of said agreement in relation to said patented invention the said American Sales Book Company has extensively practiced the said patented invention, and has extensively introduced the same, and made and vended to merchants and others in large quantities manifolding sales books, or pads, embodying said invention to its great advantage and profit. And that the said American Sales Book Company at all times was, and still is prepared to supply said patented manifolding sales books to all who desire to purchase the same. That the said patented invention through said efforts of said plaintiff has become extensively advertised, and is widely known. That on the said manifolding sales book so manufactured and sold by the plaintiff due and sufficient notice was given to the public that the invention therein comprised had been duly patented; and that the public generally have acknowledged the merits and utility of said invention, and the rights of the plaintiff under said letters patent issued therefor. That about the first day of February, 1901, the defendant was further personally apprised of the said letters patent, and manifolding sales book, manufactured by said plaintiff, and embodying said patented improvements, were offered for sale to him.

Yet the defendant knowing the premises and though

having need of such manifolding sales books, refused to purchase the same from plaintiff and its agent; and instead, for the purpose of contriving to injure the plaintiff, from about the first day of February, 1901, continuously to the 8th day of March, 1901, during the term of said letters patent, unlawfully and wrongfully, without the consent, and against the will of the plaintiff, did use in his business at Portland in the State of Oregon, manifolding sales books embodying said patented improvement, which books, the defendant had unlawfully procured from one W. H. Jarrett (residing out of this District of Oregon, to wit, at Seattle Washington), in violation and infringement of the said exclusive right secured by said letters patent to these plaintiffs, and contrary to the statutes of the United States in such cases made and provided; whereby the plaintiffs have been greatly injured and deprived of profits, royalties and benefits which they otherwise would have derived, and have sustained actual damages in the amount of one hundred dollars.

Wherefore, by force of the statutes of the United States a right of action has accrued to the plaintiff to recover the said actual damages, and such additional amount not exceeding in the whole three times the amount of said actual damages, as the Court may see fit to adjudge and order, besides costs; which damages, however, the defendant has refused, and still refuses to pay, and therefore, the plaintiff brings this action.

T. J. GEISLER,
Attorney for Plaintiff.

United States of America, }
 District of Oregon. }
 1 }

I, Charles H. Wilcox, of Portland, Oregon, being first duly sworn, depose and say that I am the agent and representative of the plaintiff in the above-entitled case within and for the State of Oregon; that I have read the foregoing declaration, and that the same is true as I verily believe; that the reason that this verification is made by me is that the plaintiff is a corporation domiciled at Elmira in the State of New York, and that none of the officers thereof are within the District of Oregon.

C. H. WILCOX.

Subscribed and sworn to before me this 6th day of May, 1901.

[Seal]

T. J. GEISLER,
 Notary Public for Oregon.

Service of copy of within amended declaration is hereby admitted.

May 6, 1901.

OTTO J. KRAEMER,
 Attorney for Defendant.

Filed May 7, 1901. J. A. Sladen, Clerk, United States Circuit Court, District of Oregon.

And afterwards, to wit, on the 28th day of June, 1901, there was duly filed in said court a plea of defendant, in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

AMERICAN SALES BOOK COMPANY (a Corporation), and WARREN F. BECK,

Plaintiffs,

vs.

JOSEPHUS BULLIVANT, Jr.,

Defendant.

Plea to Amended Declaration.

Comes now the defendant herein by his attorney, Otto J. Kraemer, and defends the wrong and injury when and in the manner as alleged in the plaintiffs' declaration of trespass in the case or otherwise, and says that he is not guilty of the said supposed grievances above laid to his charge, or any or either of them, or any part thereof in manner and form as the said plaintiffs have above complained against him, and of this the defendant puts himself upon the country, and the defendant gives the following notices in writing of special matters to the plaintiffs thirty days prior to the trial:

The plaintiffs will take notice that the above-named defendant will prove upon the trial of this cause in bar of the said plaintiff action as follows:

That the said invention and device claimed by the plaintiffs was not new when produced, and that substantially the same invention and device as claimed by the plaintiffs was in use and manufacture for many years prior to and at the time when the said Warren F. Beck of Elmira, New York, applied for and obtained letters patent, to wit: On April 24th, 1900, and number 647,934, and which said old invention, device or manufacture above referred to is illustrated to a great extent by duplicate and triplicate order, shipping and receipt books manufactured and sold by Charles E. Crosby & Company of St. Paul, Minnesota, doing business in the Union Block, corner Fourth and Cedar streets.

And, further, that the invention and device claimed by the plaintiffs as in their declaration herein set forth is substantially the same invention and device as is and has been for more than two years last past and prior to the issuance of the letters patent in the declaration herein set forth, in use and for sale in this country, as is shown by thumbhold indexes and the index systems used in ledgers and other books generally, and also in the manner in which carbon transfer sheets now are and for the same length of time have been used, fastened at one end upon check or sale pads and so sold in this country.

That the combination of the plaintiffs' patent is simply a mechanical union of many old inventions and devices and in no manner required inventive art or genius, or produced any new effect entitling plaintiffs to the patent claimed.

OTTO J. KRAEMER,
Attorney for Defendant.

United States of America, }
District of Oregon. } ss.

On this 10th day of June, 1901, personally appeared before me Josephus Bullivant, who makes solemn oath that the facts set forth in the above plea are true to the best of his knowledge and belief.

J. BULLIVANT, Jr.

Subscribed and sworn to before me this 10th day of June, 1901.

[Seal]

OTTO J. KRAEMER,
Notary Public for Oregon.

Due services of a copy hereof properly certified is hereby accepted this 10th day of June, 1901.

T. J. GEISLER,
Attorney for Plaintiff.

Filed June 28, 1901. J. A. Sladen, Clerk, United States Circuit Court, District of Oregon.

And, to wit, on the 24th day of June, 1901, there was duly filed in said court a replication in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

AMERICAN SALES BOOK COM-
PANY (a Corporation), and WAR-
REN F. BECK,

Plaintiffs,

vs.

JOSEPHUS BULLIVANT, Jr.,

Defendant.

Replication.

And the said plaintiffs as to the said pleas of the said defendant by him being pleaded, and of which he has put himself upon the country doth the like.

And the plaintiffs as to the said plea of the defendant by him secondly above pleaded, say that the said Charles E. Crosby & Company of St. Paul, Minnesota, did not manufacture or sell any duplicate or triplicate order, shipping or receipt book in anywise anticipating or disclosing the said patented invention of plaintiffs prior to the invention thereof by the plaintiff, Warren F. Beck, nor was the said patented invention known or in use prior to said invention, and of this the plaintiffs put themselves upon the country.

And the plaintiffs as to the said plea of the defendant thirdly above pleaded, say that the said invention is not in anywise the same invention and device which is or has been for more than two years prior to the application for said letters patent on said invention in use or on sale in this country as shown by thumbhold indexes or the index system used in ledgers or any other form of books, or in the manner in which carbon transfer-sheets have ever been used, and of this the plaintiffs put themselves upon the country.

T. J. GEISLER,
Attorney for Plaintiffs.

United States of America, }
District of Oregon. } ss.

On this 15th day of June, 1901, before me personally appeared Charles H. Wilcox, who being by me duly sworn, did depose and say: I am the agent and representative of the plaintiffs in the above-entitled cause within the State of Oregon; that I have read the foregoing replication and that the same is true as I verily believe; that the reason that this verification is made by me is that the plaintiff is a corporation domiciled at Elmira in the State of New York, and that none of the offices thereof are in the District of Oregon.

C. H. WILCOX.

Subscribed and sworn to before me this 15th day of June, 1901.

[Seal]

T. J. GEISLER,
Notary Public for Oregon.

A certified copy of the above as within was duly served.
Dated June 17, 1901.

OTTO J. KRAEMER,
Attorney for Defendant.

Filed June 24, 1901. J. A. Sladen, Clerk, United States
Circuit Court, District of Oregon.

And afterwards, to wit, on the 24th day of June, 1901,
there was duly filed in said court a stipulation to set
cause for trial, in words and figures, as follows, to
wit:

*In the Circuit Court of the United States for the District of
Oregon.*

AMERICAN SALES BOOK COMPANY
(a Corporation), and WARREN F.
BECK,

Plaintiffs,

vs.

JOSEPHUS BULLIVANT, Jr.,

Defendant.

Stipulation to Set Cause for Trial.

It is hereby stipulated that the above-entitled cause
may now be set for trial, and that all informalities in
the pleadings may be waived, and the case when tried be
submitted on the merits according to the law and facts
involved.

T. J. GEISLER,
Attorney for Plaintiffs.
OTTO J. KRAEMER,
Attorney for Defendant.

Filed June 24, 1901. J. A. Sladen, Clerk, United States Circuit Court, District of Oregon.

And afterwards, to wit, on Monday, the 14th day of October, 1901, the same being the 7th judicial day of the regular October term of said Court—Present, the Honorable CHARLES B. BELLINGER, United States District Judge presiding—the following proceedings were had in said cause, to wit:

In the Circuit Court of the United States for the District of Oregon.

AMERICAN SALES BOOK COM-
PANY,

vs.

JOSEPHUS BULLIVANT, Jr.,

} No. 2,665.
} October 14,
} 1901.

Order Setting Cause for Trial.

Now, at this day, on motion of Mr. T. J. Geisler, of counsel for the above-named plaintiff, it is ordered that the trial of this cause be, and the same is hereby, set for Monday, October 28, 1901.

And afterwards, to wit, on the 28th day of October, 1901, there was duly filed in said court a stipulation waiving jury, and of facts, in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

AMERICAN SALES BOOK COM-
PANY (a Corporation), and WAR-
REN F. BECK,

Plaintiff,

vs.

JOSEPHUS BULLIVANT, Jr.,

Defendant.

Stipulation Waiving Jury and of Facts.

It is hereby stipulated that this cause be tried by the Court without a jury; and that upon such trial the following facts shall be assumed as duly proved:

1. That on the 24th day of April, 1900, letters patent of the United States were issued by the United States Patent Office under No. 647,934, to Warren F. Beck of Elmira, New York, and that Plaintiffs' Exhibit "A" is a true copy of such patent.

2. That the said Warren F. Beck is still the owner of such letters patent; and that by an agreement duly entered into between himself and the plaintiff, American Sales Book Company, a corporation, the latter has

the exclusive right to make, use and sell, and permit others so to do throughout the United States and its territories, manifold sales book or pads embodying the invention described in said letters patent.

3. That the defendant is, and for a long time past has been, carrying on a grocery business at Nos. 461-463 Jefferson St., in the city of Portland, within this District.

4. That the defendant bought from the Ideal Duplicate Order Book Company of Seattle, Washington, a number of sales books of the style as Plaintiffs' Exhibit "B," and used the same in the ordinary course of his business subsequent to said letters patent.

5. That for many years prior to the application for the issuance of the letters patent in question on the said invention, duplicate order books were in general use, the same having a carbon sheet, loose or secure in place, for transferring the memorandum of the order written on one sheet to a duplicate sheet or sheets arranged below. But in none of such books did the carbon sheet have a corner cut away, or a thumbhole, for the purpose stated by said Beck in his specification of said invention forming a part of said patent.

6. That prior to said invention and letters patent duplicate order books with carbon were also in common use, in which books certain sheets thereof on which the memorandum was to be written or copied had corners cut away, as shown in illustration on card of Chas. E. Crosby & Company, Defendant's Exhibit "A," and also as shown in sheets with carbon marked, Defendant's Exhibit "B."

7. That for many years prior to said invention, books, ledgers and the like have been in common use, which, for the purpose of facilitating the use of the index with which they were provided, had thumbholes enabling the opening of the book at a certain place.

8. That the defendant relies on the devices referred to above in paragraphs 5, 6 and 7, of this stipulation as proving that the said patented invention lacks novelty, and is merely a mechanical change of existing devices.

9. That the plaintiffs claim only by infringement of claims two and three of said letters patent.

10. That it is stipulated that if the plaintiffs recover, they shall not be entitled to more than nominal damages of defendant.

T. J. GEISLER,

Attorney for Plaintiffs.

OTTO J. KRAEMER,

Attorney for Defendant.

Filed October 28, 1901. J. A. Sladen, Clerk, United States Circuit Court, District of Oregon.

And afterwards, to wit, on the 27th day of November, 1901, there was duly filed in said court findings of fact and conclusion of law, in words and figures as follows, to wit:

In the United States Circuit Court, for the District of Oregon

AMERICAN SALES BOOK COMPANY
(a Corporation), and WARREN F.
BECK,

Plaintiffs,

vs.

JOSEPHUS BULLIVANT, Jr.,

Defendant.

Findings of Fact and Conclusions of Law.

This cause having come on to be heard and determined upon the merits thereof, the plaintiffs appeared by their attorney, Mr. T. J. Geisler, and the defendant by his attorney, Mr. Otto J. Kraemer; and the plaintiffs having called as witnesses on their behalf Charles H. Wilcox and ——— Strauhal; and a stipulation as to certain facts having been also introduced in evidence, and the case thereupon argued, the Court at this time makes the following:

FINDINGS OF FACT.

1. That the plaintiff, American Sales Book Company is a corporation duly organized, existing and domiciled at Elmira, in the State of New York; and that Warren

F. Beck is a citizen of the State of New York, also residing at Elmira aforesaid, and that the defendant is a citizen of the State of Oregon.

2. That on the 24th day of April, 1900, letters patent of the United States were upon the application of the plaintiff, Warren F. Beck as inventor, duly issued to said Beck by the United States Patent Office under number 647,934, for an improvement in manifolding sales book and holder; and in and by such letters patent there was granted unto the said Warren F. Beck and his legal representatives, the exclusive right for the term of seventeen years, beginning said 24th day of April, 1900, being the date of said letters patent, to make, use and sell, and permit others so to do, throughout the United States and territories thereof, manifold sales books embodying the features described in the specification forming a part of said letters patent, and therein claimed as follows:

“The combination, with a manifold-pad of a holder or cover therefor having a carbon or transfer-sheet secured thereto, said transfer-sheet being folded over upon the leaves of the pad, at their free ends and having a portion cut away to expose a portion of the leaves at or near their free ends for the purpose set forth.

“The combination, with a manifold-pad of a carbon or transfer-sheet normally resting upon the top of the pad, and overlying the leaves thereof, said transfer-sheet having a portion cut away to expose a portion of said leaves at or near their free ends for the purpose set forth, the leaves at their free ends being otherwise con-

cealed by the transfer-sheet." And that Plaintiffs' Exhibit "A" is a true copy of said letters patent and Plaintiffs' Exhibit "B" is a manifolding sales book embodying said patent improvement.

3. That the said Warren F. Beck is still the owner of said letters patent; and that by an agreement duly entered into between himself and the plaintiff, American Sales Book Company, the former gave the latter the exclusive right to make, use and sell throughout the United States and its territories manifold sales books, or pads, embodying the alleged invention described and claimed in said letters patent.

4. That the defendant is and for a long time has been carrying on a grocery business at No. 461-463 Jefferson St., in the City of Portland, and District of Oregon.

5. That subsequent to the granting of said letters patent, the defendant without authority from or consent of the plaintiffs, or either thereof, or their legal representatives, procured from one W. H. Jarrett, doing business under the name of the Ideal Duplicate Order Book Company at Seattle, Washington, a number of sales books of the style of Plaintiffs' Exhibit "C"; and that the defendant used said duplicate sales books in the ordinary course of his business, and continued to so use the same after he had been personally advised of the granting of said alleged letters patent to the said plaintiff, Warren F. Beck, and the alleged rights of the plaintiff, American Sales Book Company, under said alleged letters patent.

6. That the manifold sales book procured and used by the defendant as aforesaid embodied the said features and improvements patented to the said Warren F. Beck by said letters patent.

7. That prior to the discovery by said Warren F. Beck of said alleged patented improvement in manifolding sales book, no manifolding sales books were made, used or known embodying said particular and patented features or improvements, to wit, comprising a holder, or cover, and a pad on the top of which normally rested a carbon or transfer-sheet, said sheet overlying the free ends of the leaves of the pad, and covering the leaf under it; and said transfer sheet having a portion cut away to expose a portion of said leaf under it near its free end, and facilitating the withdrawal of the same from under said transfer-sheet, as in said patent described and claimed, and as shown in Plaintiffs' Exhibit "B." But for many years prior to the application for the issuance of the said letters patent on said alleged invention of Beck, duplicate order books were in general use in the United States, having a carbon sheet, loose or secured in place, for transferring the memorandum of the order written on one sheet, to a duplicate sheet, or sheets, arranged below, one illustration of which is Defendant's Exhibit "A." But in none of such manifolding books did the carbon sheet have a corner cut away, or a thumbhole for the purpose stated by said Beck in his specification of his said invention, forming a part of said letters patent.

8. That prior to the said invention and letters patent duplicate order books with carbon were also in common use in the United States, in which books certain sheets thereof which the memorandum was to be written or copied had corners cut away, as shown in illustration on card of Charles E. Crosby & Company, being Defendant's Exhibit "B," and also as illustrated by Defendant's Exhibit "C."

9. That for many years prior to said invention of Beck, books, ledgers and the like have been in common use in the United States, which, for the purpose of facilitating the use of the index with which they were provided, had thumbholes enabling the opening of the book at a certain place.

10. That in accordance with said agreement between the plaintiffs, American Sales Book Company and Warren F. Beck, said American Sales Book Company has extensively practiced the said alleged patented invention, and manufactured, advertised and introduced throughout the United States manifold sales books embodying said alleged patented improvement; and that in the northwestern States within the year ending about August, 1901, large quantities of manifold sales books embodying said alleged invention, to wit: About 500,000 have been sold to merchants and others in said Northwestern territory, and are now in use in said territory.

11. That the defendant relied on the stipulation as to facts herein, and also as illustrated by Defendant's Exhibits "A," "B," and "C"; and also upon the use of

thumbholes in indexes for books, as proving that the said invention lacks novelty, and is merely a mechanical change of said existing devices.

12. That the said alleged patented improvement offers no greater advantages or utility than the form of manifold sales books in use in the United States prior to said alleged patented invention, as shown by the evidence, defendant's exhibits, and stipulation herein.

And, as a conclusion of law, the Court finds:

That the patent relied upon by the plaintiffs, being numbered 647,934, and issued to Warren F. Beck by the United States of America under seal of the Patent Office and on the 24th day of April, 1900, is void for lack of novelty; that being void, the defendant, Josephus Bullivant, Jr., by the acts committed has in no way damaged the plaintiffs herein, and that a judgment be entered in favor of the defendant for his costs and disbursements taxed at thirty dollars; and that plaintiffs take nothing by reason of this action.

(Signed) CHARLES B. BELLINGER,

Judge.

Filed November 27, 1901. J. A. Sladen, Clerk, United States Circuit Court, District of Oregon.

And afterwards, to wit, on the 27th day of December, 1901, there was duly filed in said court a bill of exceptions, in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

AMERICAN SALES BOOK COMPANY (a Corporation), and WARREN F. BECK,	} Plaintiffs,
vs.	
JOSEPHUS BULLIVANT, Jr.,	} Defendant.

Bill of Exceptions.

Be it remembered, that afterwards, to wit, on the 28th day of October, 1901, at a stated term of said Court begun and holden in the city of Portland, in and for the District of Oregon, before his Honor, Charles B. Bellinger, District Judge, the issue joined in the above stated cause came on to be tried before the said Judge without the intervention of a jury, the parties aforesaid by their counsel having by stipulation in writing duly filed in this court, according to the statute in such case made and provided, expressly waived a jury; the plaintiffs being represented by Mr. T. J. Geisler, their attorney and counsel, and the defendant by Mr. Otto J. Kraemer, their attorney and counsel; and upon the trial of said

(Testimony of Charles H. Wilcox.)

issue, the attorney for the plaintiffs read in evidence the certain stipulation of facts duly filed herein, and thereupon offered in evidence the letters patent set forth in the declaration. And the same was received and marked Plaintiffs' Exhibit "A."

The plaintiffs also offered in evidence one of their said patented books, and the same was received and marked Plaintiffs' Exhibit "B."

And thereupon to further sustain the issues on their behalf, the plaintiffs called as a witness CHARLES H. WILCOX, who, being duly sworn, testified as follows:

I reside at the city of Portland, in the State of Oregon, and I am the Pacific Coast agent for the American Sales Book Company, having my place of business in the Marquam Building in said city of Portland. As such agent I have exclusive charge of the introduction and sale of duplicate sales books manufactured by the plaintiff, American Sales Book Company, under the letters patent of United States, No. 647,934, granted April 24, 1900, to Warren F. Beck, and referred to in the declaration in this case. I have been so in charge of said territory for about two and a half years past, and have sold large quantities of duplicate sales books manufactured by the American Sales Book Company under said letters patent. Within the year ending about August, 1901, I have sold such manifold sales books within my territory to the amount of about 500,000; and large quantities of such books are now in use in such territory. With few exceptions the merchants to whom books were sold by me have reordered the same book.

(Testimony of Charles H. Wilcox.)

(Here witness was shown the book, Plaintiffs' Exhibit "C," duly received in evidence.)

In about the early part of February, 1901, I called on Mr. Bullivant, the defendant, at his store on Jefferson St., Portland, Oregon, and saw him using in his business books like Plaintiffs Exhibit "C," and I told Mr. Bullivant of the patent granted to Warren F. Beck on duplicate sales books; and that the book used by Mr. Bullivant in his store was an infringement upon such patent. I again called on Mr. Bullivant several weeks later, before this action was commenced, and found him still using books like Plaintiffs' Exhibit "C" in his business. Mr. Bullivant may have said that he would just use up the orders which he had bought from Mr. Jarrett of Seattle, and might give me the next order.

FRANK STRAUHAL, being called as a witness on the part of the plaintiffs, testified:

I reside at the city of Portland, Oregon, and am one of the firm of Strauhal Brothers, having a grocery store on Morrison street, Portland, Oregon. I am well acquainted with the duplicate sales book in controversy here. I have used the same for some time in my business.

(Witness is here shown Defendant's Exhibit "A.")

Q. State whether in your opinion such book, Defendant's Exhibit "A," is as convenient in its use as the book manufactured by the American Sales Book Company?

A. We used to use books like this one in our store

(Testimony of Frank Strauhal.)

until Mr. Wilcox showed us some of the plaintiffs' books. Then we adopted the latter, because we liked them better. We are using the Beck book now. The carbon as arranged in plaintiffs' book is better protected, and is not apt to get wet along the edge, and to tear off, if used out of doors.

Defendant moved to strike out that part of the witness' testimony referring to the manner of fastening the carbon transfer-sheet; the only issue being whether a thumbhole in the carbon, or a corner thereof being clipped off, as claimed by plaintiffs' patent, is patentable in view of paragraph 5 of the stipulation of facts. Motion denied. Defendant excepts.

Defendant also introduced in evidence his exhibits "B" and "C," and the same were duly received.

All of said exhibits of plaintiffs and defendant are hereto attached.

And this was all the evidence introduced or offered by either party.

And thereupon the parties, plaintiffs and defendant, rested.

And thereupon the plaintiffs moved the Court for judgment on the facts proved in the case. But the Court refused to grant such judgment, and the plaintiffs duly excepted.

And thereupon the case having been submitted to the Court, the Court made its certain findings of fact and conclusions of law as of record appears.

And the plaintiffs duly excepted to the twelfth finding of the Court as wholly unsupported by any evidence; and further for the reason that such finding is wholly immaterial, and implies the application of an erroneous rule of law.

And the plaintiffs further duly excepted to the conclusion of law found by the Court, and to the decision of the Court giving judgment in favor of the defendant, for the reason that the facts found are wholly insufficient to support said decision, or said conclusion of law, or said judgment. That the said decision and conclusion of law is wholly erroneous, and the granting of judgment to defendant was contrary to the law of the premises.

And forasmuch as the facts aforesaid do not otherwise appear of record, plaintiffs pray that this, their bill of exceptions, may be certified and allowed.

The foregoing bill of exceptions may be settled and allowed as presented.

T. J. GEISLER,

Attorney for Plaintiffs.

OTTO J. KRAEMER,

Attorney for Defendant.

The foregoing bill of exceptions is hereby allowed and ordered filed.

Dated, December 27, 1901.

CHARLES B. BELLINGER,

Judge.

Filed December 27, 1901. J. A. Sladen, Clerk, United States Circuit Court, District of Oregon.

And, to wit, on the 17th day of December, 1901, there was duly filed in said court, a petition for writ of error, in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

AT LAW.

AMERICAN SALES BOOK COMPANY
(a Corporation), and WARREN F.
BECK,

Plaintiffs,

vs.

JOSEPHUS BULLIVANT, Jr.,

Defendant.

Petition for Writ of Error.

Come now the plaintiffs, American Sales Book Company, a corporation, and Warren F. Beck, and say that on the 27th day of November, 1901, judgment in this case was entered by this Court in favor of the defendant, and against these plaintiffs, by which said judgment the plaintiffs were aggrieved, in that in said judgment and the proceedings had prior thereunto in this cause, certain errors were committed to the prejudice of these plaintiffs, all of which will appear more in detail from the assignment of errors filed with this petition and referred to as if herein at length set forth.

Wherefore, plaintiffs appear that a writ of error may be issued to the United States Circuit Court of Appeals for the Ninth Circuit for the correction of the errors complained of; and that a duly authenticated transcript of the record, proceedings and papers herein may be sent to said Circuit Court of Appeals.

Dated at Portland, Oregon, the 14th day of December, 1901.

T. J. GEISLER,
Attorney for Plaintiffs.

Filed December 17, 1901. J. A. Sladen, Clerk, United States Circuit Court, District of Oregon.

And afterwards, to wit, on the 17th day of December, 1901, there was duly filed in said court an assignment of errors, in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

AMERICAN SALES BOOK COMPANY,
(a Corporation), and WARREN F.
BECK,

vs.

JOSEPHUS BULLIVANT, Jr.,
Defendant.

Plaintiffs,
Defendant.

Assignment of Errors.

Come now the plaintiffs in the above-entitled case,

and file this as their assignment of errors, referred to in their petition for a writ of error to be issued to the United States Circuit Court of Appeals for the Ninth Circuit; that is to say, in the record and proceedings in the above entitled cause there is manifest error in this, to wit:

1. Error of the Court in not finding as a conclusion of law that the letters patent issued to Warren F. Beck on the improvement in manifold sales books are prima facie evidence of their own validity.

2. Error of the Court in not finding as a conclusion of law that the prima facie validity of the said letters patent issued to Warren F. Beck has not been overcome.

3. Error of the Court in not finding as a conclusion of law that the burden of proof rested upon the defendant on his plea against the lack of novelty, and utility of the patented invention in question, and that every reasonable doubt must be resolved against the defendant in favor of the validity of the patent.

4. Error of the Court in not finding as a conclusion of law that the fact that the defendant did use manifold sales books which were identical with that of the book patented to Beck, is sufficient in itself to establish the utility of said patented invention as against the defendant.

5. Error of the Court in applying as a rule of law a comparative measurement of the advantage, or utility, of the manifold sales books patented to Beck with sales books in use prior to said patented invention.

6. Error of the Court in not finding as a conclusion of law, upon the findings of fact of the Court, namely:

That the patented invention of Beck was not known prior to its discovery by said Beck, and that said invention did possess utility in some degree; that the said patent was valid, and that the books used by the defendant were an infringement of said patented invention, and the plaintiffs herein are entitled to recover.

7. Error of the Court in not finding as a conclusion of law, upon the facts found by the Court, namely: That the invention patented to Beck was extensively practiced; and that large quantities of manifold sales books embodying said patented invention have been sold, and are now in use; that such acceptance by the public is evidence of a high degree of the utility of the invention.

8. Error of the Court in not finding as a conclusion of law, upon the following facts found by the Court, namely:

1. That the improvement patented to Beck was not known, or in use prior to its discovery by said Beck.

2. That said improvement did possess utility in some degree, and 3, that the improvement was readily adopted by the public, and manifold sales books embodying such patented improvement were extensively purchased by the public; that such facts were sufficient in themselves to sustain the novelty and utility of the improvement, and the validity of the patent.

9. Error of the Court in finding as a conclusion of law, that, because the invention patented to Beck possesses no superior degree of utility over other, and previously existing, forms of manifold sales books, therefore, the patent issued to Beck is void for lack of novelty.

10. Error of the Court in applying as a rule of law that the novelty of said invention is to be ascertained by measuring its utility comparatively with prior devices for the same purpose.

11. Error of the Court in finding that the said patent issued to Warren F. Beck of plaintiffs is void for the lack of novelty.

12. Error of the Court in giving judgment in favor of the defendant in this case, on the facts found by the Court.

13. Error of the Court in not giving judgment in favor of the plaintiffs on the facts found by the Court.

14. Error of the Court in not finding that the patent to Beck in question is valid; that the defendant infringed the same, and that the plaintiffs are entitled to recover their damages and costs because of such infringement.

T. J. GEISLER,
Attorney for Plaintiffs.

Filed December 17, 1901. J. A. Sladen, Clerk, United States Circuit Court, District of Oregon.

And afterwards, to wit, on Tuesday, the 17th day of December, 1901, the same being the 61st judicial day of the regular October Term of said Court—Present, the Honorable WILLIAM B. GILBERT, United States Circuit Judge presiding—the following proceedings were had in said cause, to wit:

*In the Circuit Court of the United States for the District of
Oregon.*

AMERICAN SALES BOOK COMPANY
(a Corporation), and WARREN F.
BECK,

Plaintiffs,

vs.

JOSEPHUS BULLIVANT, Jr.,

Defendant.

Order Allowing Writ of Error.

The plaintiffs by their attorney, T. J. Geisler, having on this 17th day of December, 1901, filed and presented to this Court their petition praying for an allowance of a writ of error intended to be urged by them; and praying further that a duly authenticated transcript of the records, proceedings and papers upon which the judgment herein was rendered may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and that such other and further proceedings may be had in the premises as may be just and proper; and upon consideration of the premises, the Court does hereby allow the writ of error, provided, however, that such plain-

tiffs give a bond according to law in the sum of two hundred and fifty (\$250.00) dollars, which said bond shall operate as a supersedeas bond.

Dated at Portland, Oregon, this 17th day of December, 1901.

WM. B. GILBERT,
Judge.

Filed December 17, 1901. J. A. Sladen, Clerk, United States Circuit Court, District of Oregon.

And afterwards, to wit, on the 17th day of December, 1901, there was duly filed in said court a bond on writ of error, in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

AMERICAN SALES BOOK COM- PANY (a Corporation), and WAR- REN F. BECK,	} Plaintiffs,
vs.	
JOSEPHUS BULLIVANT, Jr.,	} Defendant.

Bond on Writ of Error.

Know all men by these presents, that we American Sales Book Company, a corporation of New York, and Warren F. Beck, plaintiffs, and Charles H. Wilcox, surety, are held and firmly bound unto Josephus Bullivant,

Jr., in the sum of two hundred and fifty dollars to be paid to the said Josephus Bullivant, Jr., his executors or administrators. To which payment well and truly to be made, we bind ourselves, and each of us, jointly and severally and our and each of our heirs, executors and administrators, firmly by these presents.

Sealed with our seals, and dated December 14, 1901.

Whereas the above-named American Sales Book Company and Warren F. Beck have petitioned for a writ of error to be issued from, and prayed the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment in the above-entitled cause by the Circuit Court of the United States for the District of Oregon.

Now, therefore, the condition of this obligation is such, that if the above-named American Sales Book Company and Warren F. Beck shall prosecute said writ of error to effect, and answer all costs, if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

AMERICAN SALES BOOK COMPANY. [L. S.]

By C. H. WILCOX,

Agent.

WARREN F. BECK, [L. S.]

By C. H. WILCOX,

Agent.

C. H. WILCOX. [L. S.]

Signed, sealed and delivered in presence of:

T. J. GEISLER.

E. M. HOWATSON.

United States of America, }
 District of Oregon. } ss.

I, Charles H. Wilcox, being duly sworn, depose and say that I am one of the sureties in the foregoing bond; that I am a resident and freeholder within said District, and that I am worth in property situated therein, the sum of five hundred dollars. over and above all my just debts and liabilities; exclusive of property exempt from execution.

C. H. WILCOX.

Subscribed and sworn to before me this December 14, 1901.

[Seal]

T. J. GEISLER,
 Notary Public for Oregon.

Approved December 17, 1901.

WM. B. GILBERT,
 Judge.

[Endorsed]: Filed December 17, 1901, J. A. Sladen,
 Clerk.

And afterwards, to wit, on the 2d day of January, 1902, there was duly filed in said court a stipulation and order to transmit original exhibits to United States Circuit Court of Appeals, in words and figures as follows, to wit:

*In the United States Circuit Court, for the District of
Oregon.*

AMERICAN SALES BOOK COM-
PANY (a Corporation), and WAR-
REN F. BECK,

Plaintiffs,

vs.

JOSEPHUS BULLIVANT, Jr.,

Defendant.

Stipulation and Order Allowing Withdrawal of Exhibits.

It is hereby stipulated that the original exhibits of plaintiffs, "B" and "C," and defendant's original Exhibits "A," "B," and "C," filed in this court, and referred to in the bill of exceptions, may be withdrawn and sent with the transcript to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated, December 31, 1901.

T. J. GEISLER,

Attorney for Plaintiffs.

OTTO J. KRAEMER,

Attorney for Defendant.

Upon the foregoing stipulation, it is hereby ordered that the Plaintiffs' Exhibits "B" and "C," and Defendant's Exhibits "A," "B," and "C" in said stipulation re-

ferred to, may be withdrawn from the files of this Court, and forwarded with the transcript to the Appellate Court.

Dated, January 2, 1902.

CHARLES B. BELLINGER,

Judge.

Filed January 2, 1902, J. A. Sladen, Clerk, United States Circuit Court, District of Oregon.

Clerk's Certificate to Transcript.

United States of America, }
District of Oregon. } ss.

I, J. A. Sladen, Clerk of the Circuit Court of the United States, for the District of Oregon, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the foregoing pages, numbered from 3 to 54, inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case of the American Sales Book Company a corporation, and Warren F. Beck, Plaintiffs and Plaintiffs in Error, vs. Josephus Bullivant, Jr., Defendant and Defendant in Error, as the same remain of record and on file in my office and custody.

And I further certify that the cost of the foregoing transcript is twenty-two 40-100 dollars, and that the same has been paid by the said plaintiff in error.

In testimony whereof I have hereunto set my hand, and affixed the seal of said Court, at Portland, in said District, this 2d day of January, 1902.

[Seal]

J. A. SLADEN,

Clerk United States Circuit Court for the District of Oregon.

[Endorsed]: No. 791. In the United States Circuit Court of Appeals for the Ninth Circuit. American Sales Book Company (a Corporation), and Warren F. Beck, Plaintiffs in Error, vs. Josephus Bullivant Jr., Defendant in Error. Transcript of Record. In Error to the Circuit Court of the United States for the District of Oregon.

Filed January 6, 1902.

F. D. MONCKTON,

Clerk.

